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April 10, 2003

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Thomas M. Dorman
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
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Frankfort, Kentucky 40602-0615

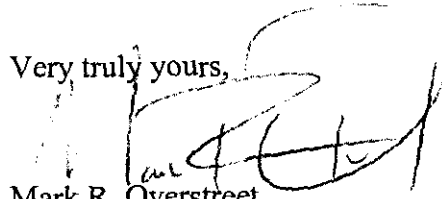
Mark R. Overstreet
(502) 208-1219
moverstreet@stites.com

RE: ***P.S.C. Case 2002-00475***

Dear Mr. Dorman:

Please find and accept for filing Kentucky Power Company d/b/a American Electric Power's Responses to the Supplemental Data Requests propounded during the company's March 25, 2003 hearing in this matter. Copies of the responses are being served on the persons listed below.

Very truly yours,


Mark R. Overstreet

cc: Michael L. Kurtz
Elizabeth E. Blackford
Brent L. Caldwell
M. Bryan Little

KE057;KE157;9060:FRANKFORT

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APR 10 2003

**PUBLIC SERVICE
COMMISSION**

COMMONWEALTH OF KENTUCKY

BEFORE THE

PUBLIC SERVICE COMMISSION OF KENTUCKY

IN THE MATTER OF

APPLICATION OF KENTUCKY POWER COMPANY)
D/B/A AMERICAN ELECTRIC POWER, FOR)
APPROVAL, TO THE EXTENT NECESSARY, TO)
TRANSFER FUNCTIONAL CONTROL OF)
TRANSMISSION FACILITIES LOCATED IN)
KENTUCKY TO PJM INTERCONNECTION, LLC)
PURSUANT TO KRS 278.218)

CASE NO. 2002-00475

RESPONSES OF AMERICAN ELECTRIC POWER
MARCH 25, 2003 HEARING DATA REQUESTS

APRIL 10, 2003

Kentucky Power
d/b/a
American Electric Power

REQUEST

Provide a copy of the Public Utilities Commission of Ohio's order in the matter of the Commission's Review of Columbus Southern Power Company's and Ohio Power Company's Independent Transmission Plan.

RESPONSE

Attached is a copy of the Public Utilities Commission of Ohio's order dated February 20, 2003 in this matter, which consists of five pages.

WITNESS: J Craig Baker

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review
of Columbus Southern Power Company's
and Ohio Power Company's Independent
Transmission Plan.

Case No. 02-3310-EL-ETP

In the Matter of the Complaint of the
Ohio Consumers' Counsel, the Industrial
Energy Users-Ohio and American
Municipal Power-Ohio, Inc.,

Complainants,

v.

Case No. 02-1586-EL-CSS

Columbus Southern Power Company and
Ohio Power Company, dba American
Electric Power,

Respondents.

In the Matter of the Complaint of the
Ohio Consumers' Counsel, the Industrial
Energy Users-Ohio and American
Municipal Power-Ohio, Inc.,

Complainants,

v.

Case No. 02-2364-EL-CSS

The Dayton Power & Light Company,

Respondent.

ENTRY

The Commission finds:

- (1) In 2000, the Commission approved electric transition plans (ETPs) for the Dayton Power and Light Company (DP&L); FirstEnergy Corp. on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy); Cincinnati Gas & Electric Company (CG&E); Monongahela Power Company (Mon Power); and Ohio Power Company and Columbus Southern Power Company (AEP) (collectively Utilities). In each of the orders approving the ETPs, the Commission deferred a determination on whether the Utilities

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independent transmission plans (ITP) comply with Section 4928.12, Revised Code, because of unresolved issues at the Federal Energy Regulatory Commission (FERC) regarding the formation of regional transmission organizations (RTO). Certain of the Utilities initially stated their intent to join the Alliance RTO or the Midwest Independent Transmission System Operator, Inc. (MISO). Pursuant to Section 4928.34(A)(13), Revised Code, the Commission deferred approving the ITPs for each of the Utilities until an order is issued pursuant to Section 4928.35(G), Revised Code.

- (2) On December 19, 2002, AEP filed applications for approval of updated ITPs. AEP states that it no longer plans to be a member of the Alliance RTO but that it plans to turn over to PJM Interconnection, LLC (PJM) the functional control of its transmission facilities in its east transmission pricing zone. AEP further states that it is negotiating mutually acceptable arrangements with PJM that would allow AEP to operate as a transmission owner within PJM pursuant to the West Transmission Owners' Agreement. AEP requests that its contemplated transfer of functional control of its transmission facilities to PJM be found in compliance with Section 4928.12, Revised Code.
- (3) On June 27, 2002, the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU), and American Municipal Power-Ohio, Inc. (complainants) filed a complaint with the Commission against the AEP companies. Complainants allege that AEP has violated the terms of its ETP stipulation approved by the Commission in *In the Matter of Columbus Southern Power Company and Ohio Power Company Electric Transition Plan*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, by failing to be a part of an operating, FERC-approved RTO by December 15, 2001. Complainants state that Section 4928.36, Revised Code, provides the Commission with the authority to determine if an electric utility has failed to implement a transition plan. Further, complainants allege that AEP's delay in joining an RTO that meets the requirements of Section 4928.12, Revised Code, constitutes inadequate service in violation of Section 4905.22, Revised Code. Complainants request that the Commission direct AEP to comply with the ETP stipulation and to participate in a fully functioning RTO that serves the entire Ohio region. Until such action is taken by AEP, complainants believe that the Commission should suspend further collection of all AEP transition charges and impose appropriate forfeitures as permitted by law. OCC and IEU also filed motions to intervene in AEP's ITP approval application. The motions shall be granted

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- (4) On September 12, 2002, complainants filed a similar complaint with the Commission against DP&L raising the same arguments as those set forth in the AEP complaint. Complainants allege that DP&L failed to join an RTO by January 1, 2001 and failed to transfer operational control of its transmission system to a fully functioning FERC-approved RTO by December 15, 2001 as agreed to in its ETP stipulation, approved by the Commission in *In the Matter of Dayton Power & Light Company Electric Transition Plan*, Case No. 99-1687-EL-ETP, et al. In addition to the remedies requested in the AEP complaint, complainants request an extension of DP&L's market development period for an additional two years, to December 31, 2005. The Supporting Council of Preventive Efforts (SCOPE) has filed a motion to intervene in this complaint. The motion will be granted.
- (5) On July 17, 2002 and October 24, 2002, respectively, AEP and DP&L filed motions to dismiss the complaints. AEP and DP&L state that at the time they entered into their respective ETP stipulations their intent was to joint the Alliance RTO. However, after months of interaction and proceedings at FERC, the viability of the Alliance RTO became less likely. Consequently, AEP and DP&L have decided to pursue other alternatives for RTO participation and currently intend to participate in PJM. On May 7, 2002, AEP signed a memorandum of understanding with PJM. AEP stated that its plan was to transfer functional control of the transmission system to PJM by December 2002. AEP and DP&L also filed motions to stay discovery until the Commission rules on their motions to dismiss the complaints.
- (6) In their motions to dismiss, the respondents argue that the Commission has deferred action on the ITP component of their ETPs and, therefore, they are not in violation of their ETP stipulations or the Commission's orders approving the ETP stipulations. The respondents also note that it was impossible for them to transfer operational control of their transmission facilities to a FERC-approved, operating RTO by December 15, 2001, because, as of that date, there was no fully operational, FERC-approved RTO. The respondents also contend that they have not used delay tactics and are actively pursuing participation in an RTO, but that FERC actions have stalled the formation of the Alliance RTO. The respondents believe the Commission should dismiss the complaints and allow the respondents to proceed with the business of transferring control of their transmission facilities to PJM once final agreements are reached.
- (7) Complainants filed memoranda contra to the motions to dismiss and filed motions to compel discovery on October 17 and November 12, 2002. Complainants contend that AEP and DP&L

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were obligated to transfer control to a FERC-approved RTO by December 15, 2001. They contend that the Commission's order deferring approval of the ITPs pursuant to Section 4928.35(G), Revised Code, did not mean AEP and DP&L did not have to live up to the stipulated conditions that AEP and DP&L transfer control of their transmission facilities to an RTO by December 15, 2001. Complainants argue that the Commission did not leave open the question of whether the utilities are required to meet their commitments; the Commission simply left open the question of how commitments would be accomplished. Complainants believe it was possible for AEP and DP&L to meet the obligations of their ETP stipulations by joining MISO, which is an operating FERC-approved RTO.

- (8) The Commission finds that the motions to dismiss the complaints should be denied. Although there appears to be no dispute that AEP and DP&L were not a part of an operating, FERC-approved RTO by December 15, 2001, there is the question of the interpretation of the Commission's ETP orders and whether AEP's and DP&L's actions comply with those orders. Consequently, we do not believe the complaints should be dismissed. Inasmuch as the issues in the AEP complaint and AEP's application involve its ITP, the Commission believes that the cases should be consolidated.
- (9) The Commission recognizes, through its participation in several FERC dockets, that there remain many unresolved issues regarding the formation, approval and operation of PJM and other transmission organizations at state and federal levels (*Alliance Companies, et al.*, and *National Grid USA* FERC No. EL02-65-000), as well as AEP's and DP&L's requests to receive FERC approval to join PJM (*The New PJM Companies*, FERC No. ER03-262-000). Further, PJM's and MISO's FERC filing to address the issue of minimizing pancaked transmission rates (*Midwest Independent System Operator, et al.* FERC No. EL02-111-000) is still pending as is FERC's proceeding regarding Standard Market Design (*Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design* FERC No. RM01-12-000). Therefore, we believe that all further activity, including discovery, in the above-captioned cases should be stayed until more clarity is achieved regarding matters pending at FERC and elsewhere. At some point in the future, the Commission will be initiating dockets to review the ITPs of DP&L, Mon Power, CG&E, and FirstEnergy, in addition to AEP's application, to determine whether those plans comply with Section 4928.12, Revised Code, and with the specifications set forth in Rule 4901:1-20-17, Ohio Administrative Code. However, there are too many unresolved issues beyond the Commission jurisdiction for

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the Commission to have a meaningful review of the Utilities' ITPs at this time.

It is, therefore,

ORDERED, That the motions to dismiss the complaints be denied. It is, further,

ORDERED, That the complaint against AEP be consolidated with AEP's above-captioned ETP proceeding. It is, further,

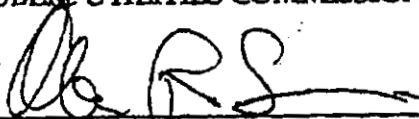
ORDERED, That the motions filed by OCC and IEU to intervene in AEP's ETP proceeding be granted. It is, further,

ORDERED, That the motion by SCOPE to intervene in the DP&L complaint proceeding be granted. It is, further,

ORDERED, That the above-captioned cases be stayed until otherwise ordered by this Commission. It is, further,

ORDERED, That a copy of this entry be served upon each party of record in the above-captioned dockets and all parties of record in Case No. 99-1729-EL-ETP, 99-1212-EL-ETP, 99-1687-EL-ETP, 99-1658-EL-ETP, and 00-02-EL-ETP.

THE PUBLIC UTILITIES COMMISSION OF OHIO



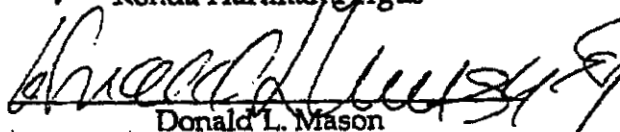
Alan R. Schriber, Chairman



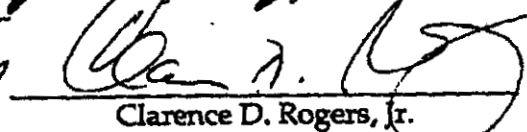
Ronda Hartman Fergus



Judith A. Jones



Donald L. Mason

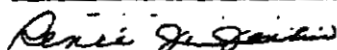


Clarence D. Rogers, Jr.

RRG;geb

Entered in the Journal

FEB 20 2003



Renee J. Jenkins
Secretary

Kentucky Power
d/b/a
American Electric Power

REQUEST

Does the Ohio Restructuring Statute require the Ohio Companies to join an RTO?

RESPONSE

Section 4928.34 (A) (13), Ohio Revised Code, requires that any transmission plan in an electric transition must reasonably comply with Section 4928.12, Ohio Revised Code and the rules adopted by the Public Utilities Commission of Ohio, unless the Commission, for good cause shown, authorizes the company to defer compliance until an order is issued under Section 4928.35 (G), Ohio Revised Code. Pursuant to Section 4928.12 (A), Ohio Revised Code, no entity shall own or control transmission facilities (as defined by federal law) in Ohio as of the date of competitive retail electric service unless the entity is a member of, and transfers control of those facilities to, one or more qualifying transmission entities. Section 4928.12 (B), Ohio Revised Code, sets forth the specifications that such entities must meet.

WITNESS: J Craig Baker

§ 4928.12 Transfer of control of transmission facilities to qualifying transmission entity; regional oversight body or mechanism.

Text of Statute

(A) Except as otherwise provided in sections 4928.31 to 4928.40 of the Revised Code, no entity shall own or control transmission facilities as defined under federal law and located in this state on or after the starting date of competitive retail electric service unless that entity is a member of, and transfers control of those facilities to, one or more qualifying transmission entities, as described in division (B) of this section, that are operational.

(B) An entity that owns or controls transmission facilities located in this state complies with division (A) of this section if each transmission entity of which it is a member meets all of the following specifications:

- (1) The transmission entity is approved by the federal energy regulatory commission.
- (2) The transmission entity effects separate control of transmission facilities from control of generation facilities.
- (3) The transmission entity implements, to the extent reasonably possible, policies and procedures designed to minimize pancaked transmission rates within this state.
- (4) The transmission entity improves service reliability within this state.
- (5) The transmission entity achieves the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service.
- (6) The transmission entity is of sufficient scope or otherwise operates to substantially increase economical supply options for consumers.
- (7) The governance structure or control of the transmission entity is independent of the users of the transmission facilities, and no member of its board of directors has an affiliation, with such a user or with an affiliate of a user during the member's tenure on the board, such as to unduly affect the transmission entity's performance. For the purpose of division (B)(7) of this section, a "user" is any entity or affiliate of that entity that buys or sells electric energy in the transmission entity's region or in a neighboring region.

(B) The transmission entity operates under policies that promote positive performance designed to satisfy the electricity requirements of customers.

(9) The transmission entity is capable of maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary services, minimizing system congestion, and further addressing real or potential transmission constraints.

(C) To the extent that a transmission entity under division (A) of this section is authorized to build transmission facilities, that transmission entity has the powers provided in and is subject to sections 1723.01 to 1723.08 of the Revised Code.

(D) For the purpose of forming or participating in a regional regulatory oversight body or mechanism developed for any transmission entity under division (A) of this section that is of regional scope and operates within this state:

(1) The commission shall make joint investigations, hold joint hearings, within or outside this state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of those investigations or hearings, or in the making of those orders, the commission is functioning under agreements or compacts between states, under the concurrent power of states to regulate interstate commerce, as an agency of the United States, or otherwise.

(2) The commission shall negotiate and enter into agreements or compacts with agencies of other states for cooperative regulatory efforts and for the enforcement of the respective state laws regarding the transmission entity.

(E) If a qualifying transmission entity is not operational as contemplated in division (A) of this section, division (A)(13) of section 4928.34 of the Revised Code, or division (G) of section 4928.35 of the Revised Code, the commission by rule or order shall take such measures or impose such requirements on all for-profit entities that own or control electric transmission facilities located in this state as the commission determines necessary and proper to achieve independent, nondiscriminatory operation of, and separate ownership and control of, such electric transmission facilities on or after the starting date of competitive retail electric service.

HISTORY: 148 v S 3. Eff 7-6-99; 10-5-99.*

<http://onlinedocs.andersonpublishing.com/revisedcode/text.cfm?GRDescription2=title%2049&...> 3/26/03

* The effective date of SB 3, as it applies to this section, is unclear. See Ohio Constitution Art. II, §§ 1c and 1d.

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KPSC Case No. 2002-00475
March 25, 2003 Hearing Data Request
Item No. 2
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§ 4928.31 Utility's transition plan.

Text of Statute

(A) Not later than ninety days after the effective date of this section, an electric utility supplying retail electric service in this state on that date shall file with the public utilities commission a plan for the utility's provision of retail electric service in this state during the market development period. This transition plan shall be in such form as the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code and shall include all of the following:

(1) A rate unbundling plan that specifies, consistent with divisions (A)(1) to (7) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, the unbundled components for electric generation, transmission, and distribution service and such other unbundled service components as the commission requires, to be charged by the utility beginning on the starting date of competitive retail electric service and that includes information the commission requires to fix and determine those components;

(2) A corporate separation plan consistent with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(3) Such plan or plans as the commission requires to address operational support systems and any other technical implementation issues pertaining to competitive retail electric service consistent with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(4) An employee assistance plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter;

(5) A consumer education plan consistent with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

A transition plan under this section may include tariff terms and conditions to address reasonable requirements for changing suppliers, length of commitment by a customer for service, and such other matters as are necessary to accommodate electric restructuring. Additionally, a transition plan under this section may include an application for the opportunity to receive transition revenues as authorized under sections 4928.31 to 4928.40 of the Revised Code, which application shall be consistent with those sections and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code. The transition plan also may include a plan for the independent operation of the utility's transmission facilities consistent with section 4928.12 of the Revised Code, division (A)(13) of section 4928.34 of the Revised Code, and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

The commission may reject and require refiling, in whole or in part, of any substantially inadequate transition plan.

(B) The electric utility shall provide public notice of its filing under division (A) of this section, in a form and manner that the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code. However, the adoption of rules regarding the public notice under this division, regarding the form of the transition plan under division (A) of this section, and regarding procedures for expedited discovery under division (A) of section 4928.32 of the Revised Code are not subject to division (D) of section 111.15 of the Revised Code.

HISTORY: 148 v S 3. Eff 7-6-99; 10-5-99.*

* The effective date of SB 3, as it applies to this section, is unclear. See Ohio Constitution Art. II, §§ 1c and 1d.

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§ 4928.34 Determinations necessary for approval or prescribing of plan; approval of abandonment.

Text of Statute

(A) The public utilities commission shall not approve or prescribe a transition plan under division (A) or (B) of section 4928.33 of the Revised Code unless the commission first makes all of the following determinations:

(1) The unbundled components for the electric transmission component of retail electric service, as specified in the utility's rate unbundling plan required by division (A)(1) of section 4928.31 of the Revised Code, equal the tariff rates determined by the federal energy regulatory commission that are in effect on the date of the approval of the transition plan under sections 4928.31 to 4928.40 of the Revised Code, as each such rate is determined applicable to each particular customer class and rate schedule by the commission. The unbundled transmission component shall include a sliding scale of charges under division (B) of section 4905.31 of the Revised Code to ensure that refunds determined or approved by the federal energy regulatory commission are flowed through to retail electric customers.

(2) The unbundled components for retail electric distribution service in the rate unbundling plan equal the difference between the costs attributable to the utility's transmission and distribution rates and charges under its schedule of rates and charges in effect on the effective date of this section, based upon the record in the most recent rate proceeding of the utility for which the utility's schedule was established, and the tariff rates for electric transmission service determined by the federal energy regulatory commission as described in division (A)(1) of this section.

(3) All other unbundled components required by the commission in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates and charges in effect on the effective date of this section.

(4) The unbundled components for retail electric generation service in the rate unbundling plan equal the residual amount remaining after the determination of the transmission, distribution, and other unbundled components, and after any adjustments necessary to reflect the effects of the amendment of section 5727.111 [5727.11.1] of the Revised Code by Sub. S.B. No. 3 of the 123rd general assembly.

(5) All unbundled components in the rate unbundling plan have been adjusted to reflect any base rate reductions on file with the commission and as scheduled to be in effect by December 31, 2005, under rate settlements in effect on the effective date of this section. However, all earnings obligations, restrictions, or caps imposed on an electric utility in a commission order prior to the effective date of this section are void.

(6) Subject to division (A)(5) of this section, the total of all unbundled components in the rate unbundling plan are capped and shall equal during the market development period, except as specifically provided in this chapter, the total of all rates and charges in effect under the applicable bundled schedule of the electric utility pursuant to section 4905.30 of the Revised Code in effect on the day before the effective date of this section, including the transition charge determined under section 4928.40 of the Revised Code, adjusted for any changes in the taxation of electric utilities and retail electric service under Sub. S.B. No. 3 of the 123rd general assembly, the universal service rider authorized by section 4928.51 of the Revised Code, and the temporary rider authorized by section 4928.61 of the Revised Code. For the purpose of this division, the rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the commission under section 4905.31 of the Revised Code is, for the term of the arrangement, the total of all rates and charges in effect under the arrangement. For any rate schedule filed pursuant to section 4905.30 of the Revised Code or any arrangement subject to approval pursuant to section 4905.31 of the Revised Code, the initial tax-related adjustment to the rate cap required by this division shall be equal to the rate of taxation specified in section 5727.81 of the Revised Code and applicable to the schedule or arrangement. To the extent such total annual amount of the tax-related adjustment is greater than or less than the comparable amount of the total annual tax reduction experienced by the electric utility as a result of the provisions of Sub. S.B. No. 3 of the 123rd general assembly, such difference shall be addressed by the commission through accounting procedures, refunds, or an annual surcharge or credit to customers, or through other appropriate means, to avoid placing the financial responsibility for the difference upon the electric utility or its shareholders. Any adjustments in the rate of taxation specified in 5727.81 of the Revised Code section* shall not occur without a corresponding adjustment to the rate cap for each such rate schedule or arrangement. The department of taxation shall advise the commission and self-assessors under section 5727.81 of the Revised Code prior to the effective date of any change in the rate of taxation specified under that section, and the commission shall modify the rate cap to reflect that adjustment so that the rate cap adjustment is effective as of the effective date of the change in the rate of taxation. This division shall be applied, to the extent possible, to eliminate any increase in the price of electricity for customers that otherwise may occur as a result of establishing the taxes contemplated in section 5727.81 of the Revised Code.

(7) The rate unbundling plan complies with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(8) The corporate separation plan required by division (A)(2) of section 4928.31 of the Revised Code complies with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(9) Any plan or plans the commission requires to address operational support systems and any other technical implementation issues pertaining to competitive retail electric service comply with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(10) The employee assistance plan required by division (A)(4) of section 4928.31 of the Revised Code sufficiently provides severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter.

(11) The consumer education plan required under division (A)(5) of section 4928.31 of the Revised Code complies with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(12) The transition revenues for which an electric utility is authorized a revenue opportunity under sections 4928.31 to 4928.40 of the Revised Code are the allowable transition costs of the utility as such costs are determined by the commission pursuant to section 4928.39 of the Revised Code, and the transition charges for the customer classes and rate schedules of the utility are the charges determined pursuant to section 4928.40 of the Revised Code.

(13) Any independent transmission plan included in the transition plan filed under section 4928.31 of the Revised Code reasonably complies with section 4928.12 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, unless the commission, for good cause shown, authorizes the utility to defer compliance until an order is issued under division (G) of section 4928.35 of the Revised Code.

(14) The utility is in compliance with sections 4928.01 to 4928.11 of the Revised Code and any rules or orders of the commission adopted or issued under those sections.

(15) All unbundled components in the rate unbundling plan have been adjusted to reflect the elimination of the tax on gross receipts imposed by section 5727.30 of the Revised Code.

In addition, a transition plan approved by the commission under section 4928.33 of the Revised Code but not containing an approved independent transmission plan shall contain the express conditions that the utility will comply with an order issued under division (G) of section 4928.35 of the Revised Code.

(B) Subject to division (E) of section 4928.17 of the Revised Code, if the commission finds that any part of the transition plan would constitute an abandonment under sections 4905.20 and 4905.21 of the Revised Code, the commission shall not approve that part of the transition plan unless it makes the finding required for approval of an abandonment application under section 4905.21 of the Revised Code. Sections 4905.20 and 4905.21 of the Revised Code otherwise shall not apply to a transition plan under sections 4928.31 to 4928.40 of the Revised Code.

HISTORY: 148 v S 3. Eff 7-6-99; 10-5-99.**

* So in enrolled bill, division (A)(6).

** The effective date of SB 3, as it applies to this section, is unclear. See Ohio Constitution Art. II, §§ 1c and 1d.

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§ 4928.35 Utility to file schedules containing unbundled rate components; equitable reduction to reflect utility's receipt of refund; standard service offer during market development period; amendment of separation plan; plan for independent operation of transmission facilities.

Text of Statute

(A) Upon approval of its transition plan under sections 4928.31 to 4928.40 of the Revised Code, an electric utility shall file in accordance with section 4905.30 of the Revised Code schedules containing the unbundled rate components set in the approved plan in accordance with section 4928.34 of the Revised Code. The schedules shall be in effect for the duration of the utility's market development period, shall be subject to the cap specified in division (A)(6) of section 4928.34 of the Revised Code, and shall not be adjusted during that period by the public utilities commission except as otherwise authorized by division (B) of this section or as otherwise authorized by federal law or except to reflect any change in tax law or tax regulation that has a material effect on the electric utility.

(B) Efforts shall be made to reach agreements with electric utilities in matters of litigation regarding property valuation issues. Irrespective of those efforts, the unbundled components for an electric utility's retail electric generation service and distribution service, as provided in division (A) of this section, are not subject to adjustment for the utility's market development period, except that the commission shall order an equitable reduction in those components for all customer classes to reflect any refund a utility receives as a result of the resolution of utility personal property tax valuation litigation that is resolved on or after the effective date of this section and not later than December 31, 2005. Immediately upon the issuance of that order, the electric utility shall file revised rate schedules under section 4909.18 of the Revised Code to effect the order.

(C) The schedule under division (A) of this section containing the unbundled distribution components shall provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service. The schedule also shall include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the commission.

(D) During the market development period, an electric distribution utility shall provide consumers on a comparable and nondiscriminatory basis within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service priced in accordance with the schedule containing the utility's unbundled generation service component. Immediately upon approval of its transition plan, the utility shall file the standard service offer with the commission under section 4909.18 of the Revised Code, during the market development period.* The failure of a supplier to deliver retail electric generation service shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under this division until the customer chooses an alternative supplier. A supplier is deemed under this section to have failed to deliver such service if any of the conditions specified in divisions (B)(1) to (4) of section 4928.14 of the Revised Code is met.

(E) An amendment of a corporate separation plan contained in a transition plan approved by the commission under section 4928.33 of the Revised Code shall be filed and approved as a corporate separation plan pursuant to section 4928.17 of the Revised Code.

(F) Any change to an electric utility's opportunity to receive transition revenues under a transition plan approved in accordance with section 4928.33 of the Revised Code shall be authorized only as provided in sections 4928.31 to 4928.40 of the Revised Code.

(G) The commission, by order, shall require each electric utility whose approved transition plan did not include an independent transmission plan as described in division (A)(13) of section 4928.34 of the Revised Code to be a member of, and transfer control of transmission facilities it owns or controls in this state to, one or more qualifying transmission entities, as described in division (B) of section 4928.12 of the Revised Code, that are planned to be operational on and after December 31, 2003. However, the commission may extend that date if, for reasons beyond the control of the utility, a qualifying transmission entity is not planned to be operational on that date. The commission's order may specify an earlier date on which the transmission entity or entities are planned to be operational if the commission considers it necessary to carry out the policy specified in section 4928.02 of the Revised Code or to encourage effective competition in retail electric service in this state.

Upon the issuance of the order, each such utility shall file with the commission a plan for such independent operation of the utility's transmission facilities consistent with this division. The commission may reject and require refile of any substantially inadequate plan submitted under this division.

After reasonable notice and opportunity for hearing, the commission shall approve the plan upon a finding that the plan will result in the utility's compliance with the order, this division, and any rules adopted under division (A) of section 4928.06 of the Revised Code. The approved independent transmission plan shall be deemed a part of the utility's transition plan for purposes of sections 4928.31 to 4928.40 of the Revised Code.

HISTORY: 148 v S 3. Eff 7-6-99; 10-5-99.**

* Division (D), the electronic copy of RC § 4928.35 reads as follows: "... under the Revised Code. During the market development period, . . ."

** The effective date of SB 3, as it applies to this section, is unclear. See Ohio Constitution Art. II, §§ 1c and 1d.

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KPSC Case No. 2002-00475
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Kentucky Power
d/b/a
American Electric Power

REQUEST

Provide a copy of the Company's Report on compliance with transmission-related merger conditions filed with the FERC on February 28, 2003.

RESPONSE

Attached is a copy of the Company's Report on Compliance with Transmission-Related Merger Conditions filed with the FERC on February 28, 2003.

WITNESS: J Craig Baker

UNITED STATES OF AMERICA
 BEFORE THE
 FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Company, Inc.)	Docket Nos. EC98-40-000,
and)	ER98-2770-000, and
))	ER98-2786-000
Central and South West Corporation)	

Report on Compliance with Transmission-Related Merger Conditions

American Electric Power Service Corporation ("AEPSC"), on behalf of the AEP Operating Companies ("AEP"),¹ submits this report on AEP's actions to comply with the transmission-related merger conditions of the Commission's Merger Order approving AEP's merger with Central and South West Corporation ("CSW").² In addition, AEP identifies in this filing further issues that the Commission should address with the states in which AEP operates, in order that AEP can proceed with its efforts to join a Commission-approved Regional Transmission Organization ("RTO").

¹ The AEP Operating Companies are Appalachian Power Company ("APCO"), Columbus Southern Power Company ("CSP"), Central Power and Light Company ("CPL"), Indiana Michigan Power Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company, Ohio Power Company ("OPCO"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), West Texas Utilities Company, and Wheeling Power Company.

² *American Elec. Power Co. and Central and South West Corp., Opinion and Order Reversing in Part, Affirming in Part, Vacating in Part, and Modifying in Part the Initial Decision*, Opinion No. 442, 90 FERC ¶ 61,242 ("Merger Order"), *order on reh'g, Opinion and Order Dismissing in Part, Denying in Part, and Granting in Part Rehearing*, Opinion No. 442-A, 91 FERC ¶ 61,129 (2000).

Before consummation of the merger, AEP implemented interim mitigation measures designed to resolve concerns expressed by the Commission, through transfer of key functions controlling access to AEP's transmission system to independent third parties and installation of a market monitor in the east to guard against abuse of the transmission system. By all indications these measures have been effective. Further, as detailed below, AEP has persistently and diligently pursued efforts to join a Commission-approved RTO, spending tens of millions of dollars and countless internal resources in the process. Indeed, AEP worked diligently to achieve, and believed until very recently, that AEP-East's acceptance into PJM Interconnection, L.L.C. ("PJM") and AEP-West's entry into the Midwest Independent Transmission System Operator, Inc. ("MISO") were imminent.

However, recent actions by several of AEP's states suggest those states will not grant requested permissions of AEP's plan to participate in an RTO until FERC and the states can resolve their differences about RTOs. These concerns center in part on the Commission's Standard Market Design ("SMD") proposals, which were advanced in 2002 and would fundamentally affect both the structure of power markets and the division between federal and state jurisdiction over integrated utilities. Most significantly, on February 25, 2003, the Virginia General Assembly approved legislation that prohibits any firm that is a public utility in Virginia from transferring ownership or control of, or operational responsibility over, any transmission system to "any person" before July 1, 2004, and thereafter without prior approval of the Virginia State Corporation Commission ("VSCC"). As more fully detailed below, other state regulatory

commissions have taken actions that call into doubt the prospect that they will grant requested permission for AEP to proceed as planned at this time.

Thus, AEP is faced with an immediate conflict, and several more potential conflicts, between its obligations pursuant to an order of this Commission and the statutory and regulatory schemes of states in which AEP provides retail electric service. AEP does not wish to act in defiance of state laws, regulations, and concerns. AEP believes it is necessary for the Commission and the states to resolve any differences concerning RTO development in order for AEP to be able to complete the process of RTO membership in the near future. AEP intends to continue to support such a resolution, although, of course, it cannot bring it about unilaterally.

AEP is sympathetic to the desire of the many of the states thoroughly to examine the effects of AEP's planned RTO participation on retail customers. At the same time, however, AEP is aware of the Commission's intent to facilitate a national transmission market system through application of the SMD requirements to RTOs. AEP needs the Commission's help to resolve this dilemma by (i) affording the states time to fulfill their legal and regulatory responsibilities and (ii) working with the states to reach an accommodation of federal and state interests.

Obviously, it would be in everyone's interest to avoid federal/state jurisdictional conflict. In this regard, AEP notes that the Commission should not be concerned with any potential exercise of transmission market power pending AEP's RTO participation, since, pursuant to the interim mitigation measures, control of access to AEP's transmission facilities is already in independent hands.

I. Background

A. The Commission's Transmission-Related Merger Conditions

On April 30, 1998, AEP and CSW filed a joint application seeking authorization to merge under Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. § 824(b) (1994). In an order setting the application for hearing, among other concerns, the Commission stated that the Applicants' analysis of competition issues might not fully have addressed whether the merger might create or enhance the ability and incentive for AEP/CSW "to use transmission to frustrate competitors' access to relevant markets."³

After a subsequent evidentiary hearing and the Presiding Administrative Law Judge's Initial Decision recommending approval of the merger,⁴ the Commission issued the Merger Order, finding that that the merger, subject to certain conditions, was consistent with the public interest. Among other conditions, the Commission required AEP immediately to implement two interim mitigation measures for its east transmission system – independent calculation and posting of ATCs and appointment of an independent market monitor – finding that these interim conditions would address market power concerns arising from the proposed merger and "protect against anticompetitive effects in electricity markets until a fully functional RTO is available."⁵ As a longer term remedy, FERC conditioned its "merger approval on AEP East and West transmission

³ Order Accepting for Filing and Suspending Proposed Tariffs and Agreements, Consolidating Dockets, and Establishing Hearing Procedures, 85 FERC ¶ 61,201 at 61,819 ("Hearing Order"), *reh'g denied*, 87 FERC ¶ 61,274 (1999).

⁴ *American Elec. Power Co. and Central and South West Corp., Initial Decision*, 89 FERC ¶ 63,007 (1999).

⁵ Merger Order at 61,789.

facilities transferring operational control of their transmission facilities to a fully-functioning, Commission-approved RTO(s) by December 15, 2001, the date specified in the RTO Final Rule for RTO formation.”⁶

II. AEP’s Actions to Satisfy the Merger Conditions

A. Interim Mitigation Measures

Through the implementation of the interim measures required by the Commission, and additional measures described below, AEP has fully and successfully addressed the transmission market power issues identified by the Commission with respect to the combination of the AEP and CSW generation and transmission systems. It has relinquished control of the administration of transmission service requests over its system to a third party, and is operating in the east under the scrutiny of an independent market monitor.⁷

⁶ *Id.* at 61,788. *See also id.* at 61,799-800, Ordering Paragraph (B). In this connection, the Commission’s previous December 15, 2001 deadline for utilities to join an RTO, reflected in the Merger Order, has been overtaken by events. In an order issued on November 7, 2001, in Docket No. RM01-12, the Commission recognized that it was not possible for all RTOs to be in operation by the December 15, 2001 deadline established in Order No. 2000, and that it intended to address in future orders the appropriate timeline for RTO progress in each general region. *Order Providing Guidance on Continued Processing of RTO Filings*, 97 FERC ¶ 61,146 (2001). The Commission also noted that “Any timetable ultimately adopted for regional integration must be based on a sound business plan with substantive buy-in from a cross section of market participants.” *Id.*

⁷ The Commission accepted AEP’s interim mitigation measures in *American Electric Power Company, et al.*, 91 FERC ¶ 61,208, *order on compliance*, 93 FERC ¶ 62,065 (2000), finding that the measures will effectively address the concerns expressed in the Merger Order.

In the East, the Southwest Power Pool, Inc. ("SPP")⁸ has been responsible for calculating the OASIS postings of short-term and long-term Total Transmission Capacity ("TTC") and ATC on the AEP system. In addition, while not required by Merger Order, SPP has been assuming the responsibility for processing of requests for transmission service under the AEP OATT (*e.g.*, granting or denying reservations for transmission service). Moreover, an independent market monitor has been guarding against anticompetitive behavior. The monitor has reported regularly to the Commission and has found no problems. AEP is not aware of any complaints by any market participant to the market monitor. In addition, PJM recently took over as security coordinator for AEP.

With respect to AEP's transmission facilities located in SPP, prior to the Merger Order, the SPP had assumed responsibility for controlling access to all SPP member companies' transmission facilities pursuant to an SPP-wide tariff. The SPP currently administers the SPP regional tariff that provides for all services required under FERC's *pro forma* tariff. In addition, SPP is responsible for performing calculations of TTC and ATC, posting those values and other required information on the SPP OASIS, processing all requests for transmission service under the tariff, and serving as the security coordinator for the region.

B. RTO Membership

AEP has also taken vigorous action, and expended substantial resources, in seeking to join a FERC-approved RTO. In the East, AEP and the other Alliance

⁸ The SPP is an independent regional reliability council, security coordinator, and tariff administrator for the interconnected electric systems in the Southwest part of the United States.

Companies submitted an RTO compliance filing pursuant to Order No. 2000⁹ in Docket No. RT01-88-000 on January 16, 2001. Through a series of orders issued in the Alliance proceedings, the Commission encouraged the Alliance Companies to pursue development of the Alliance RTO and found that the Alliance RTO substantially satisfied the RTO characteristics and functions of Order No. 2000. Indeed, on July 12, 2001, the Commission conditionally approved the Alliance RTO proposal.¹⁰ However, in a December 20, 2001 order, the Commission ultimately found the Alliance proposal non-compliant with Order No. 2000.¹¹ Since then, pursuant to the Commission's decision to accept the choices of the former Alliance companies as to which regional entity they would like to join,¹² AEP has been diligently pursuing participation in PJM. On December 11, 2002, AEP made a joint filing in Docket No. ER03-262-000 to join PJM, which was granted RTO status by the Commission on December 19, 2002.¹³

With respect to AEP's transmission facilities in SPP, PSO and SWEPCO have actively pursued participation in a regional RTO. Previously, PSO/SWEPCO participated in the development of an SPP RTO, which the Commission found inadequate

⁹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088, FERC Stats. & Regs. ¶ 31,092 (2000), *petitions for review dismissed*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) ("Order No. 2000").

¹⁰ *Alliance Companies, et al.*, 96 FERC ¶ 61,052 (2001).

¹¹ *Alliance Companies, et al.* 97 FERC ¶ 61,327 (2002).

¹² *Alliance Companies, et al.*, 100 FERC ¶ 61, 137 (2002).

¹³ *PJM Interconnection, LLC, et al.*, 101 FERC ¶ 61,345 (2002).

as an RTO.¹⁴ PSO and SWEPCO then participated in the collaborative process established by the Commission in the Southeast, but this effort proved unsuccessful because participants were divided as to RTO configuration. SWEPCO and PSO next explored participation in MISO, and entered into a Memorandum of Understanding ("MOU") with the MISO. The Commission ultimately rejected the provision regarding the rights of transmission owners to withdraw from the RTO, which rendered the MOU moot.¹⁵ Currently, PSO and SWEPCO are seeking or are planning to seek approval from Arkansas and Louisiana to transfer control of their transmission facilities to MISO.¹⁶

C. Further Actions That AEP Is Prepared To Take

Pending its participating in a fully-functioning RTO, AEP is prepared to commit to additional interim measures to address non-discriminatory transmission access concerns, subject to obtaining any required regulatory approvals. Specifically, with respect to transmission access issues, on the East, AEP is willing to move the functions now performed by SPP and the Independent Market Monitor to PJM; for the SPP utilities in the West, AEP will commit to leave these functions with SPP, or agree to have MISO assume those functions, subject to necessary state approvals.

¹⁴ *Southwest Power Pool, Inc.*, 91 FERC ¶ 61,137 (2000).

¹⁵ *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,319 P 45 (2002).

¹⁶ While AEP's transmission facilities located in ERCOT are not subject to an RTO commitment, it is worth noting that the ERCOT Independent System Operator ("ERCOT ISO"), which has been certified as an independent organization pursuant to Texas' restructuring initiatives, operates the AEP's transmission facilities located in ERCOT as part of a single control area and independently provides transmission service on a non-discriminatory basis.

III. Recent State Actions

As indicated above, recent actions in several of AEP's states call into question the prospect of prompt state approval of AEP's RTO participation. The following are the relevant state actions:

A. Virginia

On February 25, 2003, the Virginia General Assembly approved HB 2453, which prohibits any firm that is a public utility in Virginia from transferring ownership or control of, or operational responsibility over, any transmission system to "any person" before July 1, 2004, and thereafter prohibits such a transfer without prior approval of the VSCC.¹⁷

AEP previously filed with the VSCC, pursuant to existing Virginia law, an application for approval of its plans to participate in PJM. No procedural schedule has been established with respect to AEP's application.

B. Louisiana

On March 19, 2002, the Louisiana Public Service Commission ("LPSC") issued Order No. U-25965-A which, *inter alia*, provides that "no Louisiana utility will be allowed to join an RTO until the implications of the RTO on . . . public interest factors are analyzed and presented to [the LPSC] for review." AEP, on behalf of its operating company, SWEPCO, filed a cost-benefit analysis in compliance with Order No. U-25965-A on August 16, 2002.

¹⁷ A copy of the legislation is attached hereto as Exhibit 1. Both houses of the General Assembly approved it unanimously.

On September 11, 2002, AEPSC, on behalf of SWEPCO and PSO, entered into a MOU with the MISO and the SPP indicating AEP's intention to join the MISO (or merged MISO/SPP), subject to various conditions, including a right to withdraw after December 31, 2004 ("early withdrawal provision").

In September 2002, the LPSC issued a Rule to Show Cause as to why SWEPCO should not be found to be in violation of Order No. U-25965-A by virtue of having entered into the MOU. A witness for LPSC Staff recommended that the LPSC consider imposing sanctions on SWEPCO, including rate of return penalties, merely for having signed the MOU.¹⁸ AEP subsequently withdrew from the MOU because of this Commission's invalidation of the early withdrawal provision, as discussed earlier.¹⁹ AEP, nevertheless, is still endeavoring to transfer functional control of SWEPCO's and PSO's transmission facilities to MISO/SPP.

AEP has since filed an application with the LPSC for approval of its RTO plans. No procedural schedule has yet been established in that docket.

C. Arkansas

On September 11, 2002, the Arkansas Public Service Commission ("APSC") ordered SWEPCO to submit a cost-benefit analysis of its RTO alternatives. AEP filed such a cost-benefit analysis. However, on December 19, 2002, the APSC issued an order finding the analysis inadequate, ordering it to be supplemented, and ordering SWEPCO not to file an application with the APSC or FERC for approval of its RTO participation

¹⁸ Additional Direct Testimony of Stephen J. Barron, LPSC Dkt. No. U-25965, at 22.

¹⁹ *Midwest Independent System Operator, Inc.*, 101 FERC ¶61,319 (2002).

any earlier than 90 days after the date it submits its supplemented analysis. AEP expects to file a supplemented analysis no later than March 4, 2003.

D. Kentucky

On December 19, 2002, AEP filed an application with the Kentucky Public Service Commission ("KPSC") for approval of AEP's participation in PJM. The KPSC has established a procedural schedule leading to hearings now scheduled for March 17, 2003.

E. Indiana

Also on December 19, 2002, AEP filed with the Indiana Utility Regulatory Commission ("IURC") an application for approval of AEP's participation in PJM. A procedural schedule has been established leading to hearings currently scheduled for March 19-21, 2003.

F. Ohio

On December 19, 2002, AEP, pursuant to Ohio law, filed with the Public Utilities Commission of Ohio ("PUCO") a request for approval of AEP's participation in PJM as part of an amended Independent Transmission Plan. On February 20, 2003, the PUCO issued an entry which states, in relevant part, that in light of the "many unresolved issues regarding the formation, approval and operation of PJM and other transmission organizations at state and federal levels," including several pending proceedings at FERC, as well as the unresolved SMD rulemaking, "there are too many unresolved issues

beyond the Commission's jurisdiction for the Commission to have a meaningful review of the [Ohio] Utilities' ITPs at this time."²⁰

G. Southeastern Association of Regulatory Commissioners

On February 21, 2003 public utility commissioners from eleven states, including five states served by AEP Operating Companies (three in the east and two in the west), acting through the Southeastern Association of Regulatory Commissioners, sent Chairman Wood a letter responding to "your request for input on how our states and [the Commission] can work together to advance competitive wholesale electric markets in our region for the benefit of ultimate consumers."²¹ The commissioners stated that they had concluded:

[A]n incremental approach to voluntary RTO formation and wholesale market development which insures that the benefits for retail customers outweigh the costs and that the existing jurisdictional responsibilities of state and federal regulators remain intact is the best way to proceed to improve wholesale markets in the Southeast.²²

Further, the commissioners stated:

Acceptance of any alteration in the manner in which electric power is provided at wholesale or retail that would have the impact of increasing the cost of retail service or decreasing the reliability at which retail service is provided, without

²⁰ *In the Matter of the Commission's Review of Columbus Southern Power Company's Independent Transmission Plan*, PUCO Case No. 02-3310-EL-ETP, Entry, February 20, 2003.

²¹ Letter from James Y. Kerr, II, President of Southeastern Association of Regulatory Commissioners, to the Honorable Pat Wood, III, Chairman of FERC ("SEARUG Letter") at 1 (Feb. 21, 2003).

²² *Id.*

proven and quantifiable offsetting benefits, would amount to . . . an abdication of our responsibilities to the retail consumers that we are obligated to protect.²³

While the commissioners observed that there was “no crisis requiring abrupt action in the Southeast,” they stated they were “encouraged by your announcement of January 13, 2003, that the FERC will issue for further comment a white paper in April concerning modifications to the FERC’s SMD proposal, and your suggestion that regional flexibility and regionally tailored timetables are now your preferred approach.”²⁴ The commissioners went on to identify a series of “threshold issues,” that they viewed as necessary for the Commission to address “in order to facilitate a cooperative approach to electric industry improvement in the Southeast,” and stated that they looked forward to “the dialogue that could result from a favorable determination on these threshold issues.”²⁵

IV. Differences Between the Commission and States, and Among States, Regarding the SMD NOPR

At the time that FERC issued the Merger Order and that AEP accepted the conditions of the Order, the Commission had defined an RTO as having attributes that meet the principles set forth in Order No. 2000. Under Order No. 2000, RTOs must be independent from market participants; must have sufficient scope and regional configuration; must have operational authority for all transmission facilities under its participants’ control; and must have the authority for maintaining reliability.²⁶ In

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Id.* at 3, 9.

²⁶ Order No. 2000 at 31,046.

addition, RTOs must perform certain functions described in Order No. 2000, including the administration of the transmission tariff; congestion management; development of procedures to address parallel path flow; and market monitoring.²⁷

In 2002, the Commission issued the SMD NOPR proposing sweeping changes with respect to transmission policies in an effort to standardize electric utilities' operations and practices. A number of state political officials and regulatory bodies have expressed concerns that the SMD NOPR is too far-reaching in its expansion of the federal role in utility regulation. At the time that the Commission ordered AEP to join an RTO, that order required that AEP join an organization that satisfied the principles set forth in Order No. 2000. No state objected to AEP's prospective RTO membership based on those principles. However, it is clear that the SMD NOPR is viewed by some states as a significant change.

At this point, AEP continues to pursue RTO membership, but is faced with the above-described federal and state issues. Until the Commission and the states can resolve the differences between them, AEP is reluctant to go further, and the Commission should not expect it to attempt to do so.

Fortunately, the Commission and states have at hand forums such as the State-Federal Midwest Regional Panel in which these issues should be addressed in direct discussion rather than confrontation. On January 14, 2003, FERC Commissioners and staff and commissioners and staff from several states in AEP's eastern service territories and surrounding areas engaged in a teleconference to discuss the possibility of

²⁷ *Id.* at 31,106.

coordinating regulatory proceedings involving applications by utilities to join RTOs. Chairman Wood, Commissioner Brownell, and FERC staff members appeared responsive to the states' concerns and agreed to form a joint working group to address issues of joint processing. As noted above, the Southeastern Association of Regulatory Utility Commissioners have written to Chairman Wood suggesting a dialogue on these issues. AEP believes that such efforts may point the way for FERC and the states to resolve the conflicts discussed in this filing.

If such discussions fail to achieve a resolution, Section 205 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") permits the Commission, in some circumstances, to exempt electric utilities from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area."²⁸ Obviously, AEP would be reluctant to see the Commission invoke this remedy,

²⁸ 16 U.S.C. § 824a-1. The Commission has noted that PURPA Section 205, which concerns power pooling arrangements, supports Commission's authority to promote regional coordination of electric utilities by providing the Commission the authority to "exempt electric utilities from state laws or regulations which prohibit or prevent voluntary coordination." Order No. 2000 at 31,045; *see also Public Service Co. of New Mexico*, 25 FERC ¶ 61,469 at 62,038 (1983) ("We are mandated by Section 205(b) of Public Utilities Regulatory Policies Act to study the opportunities through pool arrangements, for achieving 'increased reliability,' 'conservation of energy' and 'optimization in the efficiency of use of facilities and resources. Where such opportunities exist, we are given the authority to recommend to electric utilities that they enter into negotiations to establish pooling arrangements. Congress thought this function so important that it expressly authorized us to override State laws and regulations which stand in the way of achieving economically utilization of facilities in any area." (Citations omitted.) *Accord Pacific Gas and Electric Co.*, 38 FERC ¶ 61,242 at p. 61,791 (1987) (PURPA "reaffirms the Commission's authority to promote voluntary coordination of electric utilities."))

and presumably the Commission would view reconciliation as a much better outcome than resort to compulsion.

V. Conclusion

AEP believes that its actions to date have removed the transmission market power concerns expressed in the Merger Order and have fully satisfied the interim measures requiring the control of access to, and monitoring of, its transmission system by independent third parties. The issues identified in the Merger Order – particularly that the merged company would use its combination of generation and transmission assets to frustrate competitors' access to relevant markets²⁹ – have been addressed and satisfied by the interim measures. And, as stated above, AEP is prepared to augment these measures to address further the Commission's transmission policy objectives.

Further progress toward RTO membership on AEP's part is best achieved by FERC and the states resolving their differences over RTO participation. However, notwithstanding their importance, the objectives stated in the proposed SMD NOPR, such as standardization of U.S. power markets under expanded federal jurisdiction, are generic FERC policy initiatives rather than issues that relate specifically to AEP or to the AEP-CSW merger. Under these circumstances, AEP will continue, as appropriate, in its efforts to join a FERC-approved RTO. However, AEP cannot be expected, in defiance of state laws and concerns, unilaterally to take actions that states have prohibited or for which states have declined to provide requisite approvals. The Commission may have the

²⁹ See Merger Order at 61,786.

authority to exempt AEP from these state prohibitions and requirements, but the decision whether to exercise such authority lies with this Commission.

Respectfully submitted,

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Washington, D.C.
February 28, 2003

EXHIBIT 1

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties listed on the official service list compiled by the Secretary for these proceedings.

Dated at Washington, D.C. this 28th day of December 2003.

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